

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

03 - 71321

JOHN FEIKENS

GORDON LEROY McINTOSH,

Plaintiff,

v

LAKE ORION POLICE OFFICER
ROBERT BARKER, badge 016,

Defendant.

Case No

MAGISTRATE JUDGE SCHEFFR

THOMAS M. LOEB (P25913) ✓
Attorney for Plaintiff
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U.S. DIST. COURT CLERK
EAST DIST. MICHIGAN
DETROIT

*COMPLAINT FOR DAMAGES,
DECLARATORY RELIEF, AND JURY DEMAND*

Plaintiff, by Thomas M. Loeb, his attorney, complains against the above-named defendant and in support state as follows:

Preliminary Statement

1. This is an action for declaratory relief and money damages brought by plaintiff, a citizen and resident of Oakland County, Michigan, against defendant Village of Lake Orion Police Officer Robert Barker, badge 016, for

damages arising out of an incident which occurred on Saturday February 3, 2001 when he was brutally beaten, physically assaulted, and pepper sprayed, all while handcuffed and in the defendant's custody. Plaintiff seeks relief pursuant to 42 USC §1983 against the above-named officer. The plaintiff's claims are based on the intentional, deliberate, malicious, willful, wanton, deliberately indifferent, and grossly negligent actions by this officer in injuring him. Plaintiff seeks a declaratory judgment that defendant did violate his right to be free from an unreasonable seizure of his person, and deprived him of his liberty without due process of law, as guaranteed under the Constitution and laws of the United States.

Jurisdiction and Venue

2. This court has jurisdiction over these claims pursuant to 28 USC §§ 1331, 1367, 1343, 2201, and 2202.

3. Venue is properly laid in this court pursuant to 28 USC §1391(b).

Plaintiff and Defendant

4. That plaintiff Gordon Leroy McIntosh was a citizen and resident of Oakland County, State of Michigan, at all times relevant to this complaint.

5. That defendant Village of Lake Orion Police Officer Robert Barker, badge 016, was a police officer and employee of the Village of Lake Orion,

acting within the scope of his employment and under the color of law at all times relevant to this complaint.

6. That defendant Barker is being sued in his individual capacity.

Facts

7. On or about Saturday February 3, 2001 plaintiff was arrested by defendant and his partner, Officer Titus, for the offense of operating a motor vehicle under the influence of liquor, (OUIL) a misdemeanor under Michigan law.

8. Plaintiff cooperated with defendant while on the scene.

9. After defendant arrested plaintiff, plaintiff was placed in defendant's scout car, and eventually transported to the Lake Orion Police Department.

10. At all relevant times, plaintiff was handcuffed behind his back.

11. While at the police department, plaintiff requested an opportunity to call his attorney.

12. Defendant offered to allow him to do this by simply stating, "There's the phone, help yourself." However, defendant refused to remove his handcuffs.

13. Prior to plaintiff's arrest, he suffered a serious closed head injury. This injury affected plaintiff's ability to communicate.

14. Defendant was made aware of plaintiff's closed head injury before plaintiff was transported to the police station.

15. While at the police station, and still in handcuffs, plaintiff repeatedly asked to use the bathroom.

16. Defendant refused to allow him to do so.

17. Plaintiff's need to use the bathroom became so severe, that he could not help but urinate on himself.

18. After defendant observed that plaintiff urinated on himself, he punched plaintiff in the eye and head, causing him severe injuries.

19. While still handcuffed, defendant pepper sprayed plaintiff's face repeatedly.

20. That as a direct and proximate result of the above-described conduct of defendant, plaintiff sustained and will continue to sustain pain, suffering, indignation, aggravation, humiliation, outrage, mental distress, mental anguish, medical expenses, embarrassment, loss of liberty, loss of cherished constitutional rights, and fear.

21. As a result of his unlawful, malicious, reckless and indifferent acts or omissions, defendant Barker, acting under color of law but contrary of law, did deprive plaintiff of his rights, privileges, or immunities secured under The Constitution and laws of the United States and the State of Michigan and 42

USC §1983, including plaintiff's right to be free from an unreasonable search or seizure of his person, as guaranteed by Amendments IV and XIV of the United States Constitution, by using excessive force upon him while in defendant's custody.


Therefore, for all the above reasons, plaintiff demands judgment against defendant for compensatory damages and individually for punitive damages, in whatever amount the jury may determine, plus costs, interest and actual attorney fees pursuant to 42 USC §1988.

PLAINTIFF DEMANDS A JURY TRIAL.

Dated:

4/1/03

Respectfully submitted,



Thomas M. Loeb (P25913)
Attorney for Plaintiff